consequent restraint on alienation has not usually been deemed to be against public policy. See *Bargate* v. *Shortridge*, 5 H. L. Cas. 297, 311; *Borland's Trustee* v. *Steel Brothers & Co., Ltd.*, [1901] 1 Ch. 279; GRAY, RESTRAINTS, 2 ed., § 29*d*. Any such restriction, however, must acquire its force either from incorporation in the agreement of association as one of the original incidents of the share or else by means of a by-law in some way binding upon the holders. It is generally said that a mere by-law is not sufficient to create the restriction on the right to transfer the stock. *Kinnan* v. *Sullivan County Club*, 26 N. Y. App. Div. 213, 50 N. Y. Supp. 95; *Sargent* v. *Franklin Insurance Co.*, 8 Pick. (Mass.) 90. *Cf. Brinkerhoff-Farris Trust & Savings Co.* v. *Home Lumber Co.*, 118 Mo. 447, 24 S. W. 129. But even a by-law will effectively impose the restriction if the stock recites the limitation, or is clearly taken on those terms. *New England Trust Co.* v. *Abbott*, 162 Mass. 148, 38 N. E. 432; *Barrett* v. *King*, 181 Mass. 476, 63 N. E. 934. *Cf. Nicholson* v. *Brewing Co.*, 82 Oh. St. 94, 91 N. E. 991. See Uniform Stock Transfer Act, § 15. On the other hand, by express agreement among themselves the stockholders themselves may restrict the transfer of shares almost without limitation. See *Fitzsimmons* v. *Lindsay*, 205 Pa. 79, 82, 54 Atl. 488, 489; *Williams* v. *Montgomery*, 148 N. Y. 519, 43 N. E. 57; 20 HARV. L. REV. 328. Similarly, where the restrictions are found in the agreement of association and referred to on the certificates, they are treated as inherent in the share itself and consequently bind all holders. *Gibbs* v. *Long Island Bank*, 83 Hun (N. Y.) 92, 31 N. Y. Supp. 406. In the principal case the statute itself showed there was no policy against restrictions, and there was no valid objection, therefore, to limitations expressed in the agreement and repeated in the certificates, and found by the court to be entirely reasonable in view of the nature and purposes of the association.

DAMAGES — MEASURE OF DAMAGES: TORT — SEVERANCE FROM REALTY: WILFUL AND INNOCENT TRESPASS. — The defendants carried off a quantity of ore from the plaintiff's mine, milled it, and sold the finished product. Part of the ore was taken with knowledge of the plaintiff's rights. In an action of trespass, the court instructed the jury that the measure of damages for innocent trespass was the gross proceeds of the sale less all the defendant's expenses; but that when the trespass was wilful, the defendant was entitled to no deductions. *Held*, that these instructions are correct. *Liberty Bell Gold Mining Co.* v. *Moorhead Mining & Milling Co.*, 145 Pac. 686 (Colo.).

By the weight of authority, the measure of damages for an innocent trespass is, as stated in the principal case, the value of the ore in the ground, plus any profits of the transaction. *Forsyth* v. *Wells*, 41 Pa. 291; *Burke Hollow Coal Co.* v. *Lawson*, 151 Ky. 305, 151 S. W. 657. See *Winchester* v. *Lang*, 33 Mich. 205; *Dougherty* v. *Chestnut*, 86 Tenn. 1. This rule adequately compensates the plaintiff for the injury suffered, and inflicts no penalty on the defendant. A harsher rule, allowing the plaintiff to recover the value of the ore after severance, is in force in some jurisdictions. *Donovan* v. *Consolidated Coal Co.*, 187 Ill. 28, 58 N. E. 290; *Barton Coal Co.* v. *Cox*, 39 Md. 1. A few states apply this larger measure of damages only when the action is in trover. *Ivy Coal & Coke Co.* v. *Alabama Coal & Coke Co.*, 135 Ala. 579, 33 So. 547. · *Cf. Warrior Coal & Coke Co.* v. *Mabel Mining Co.*, 112 Ala. 624, 20 So. 918. This distinction is objectionable as giving two measures of damages for the same injury. It does not exist, of course, where forms of action have been abolished. See SEDGWICK, DAMAGES, 9 ed., § 500 *et seq.* Where the trespass is wilful, the plaintiff, by the great weight of authority, can recover the full value of the converted article at the time of demand. *St. Clair* v. *Cash Gold Mining & Milling Co.*, 9 Colo. App. 235, 47 Pac. 466; *Liberty Bell Co.* v. *Smuggler Co.*, 203 Fed. 795. *Cf. Single* v. *Schneider*, 30 Wis. 570; *McGuire* v. *Boyd Coal & Coke Co.*, 286 Ill. 69,

86 N. E. 174. If the defendant's right to recover his expenses depended upon a quasi-contractual counterclaim, this result would be correct, for the wrongdoer has no claim in quasi-contract. See 22 HARV. L. REV. 419, 425. The courts, however, have not treated the question in this way, but give the plaintiff compensation beyond his injury on the theory of exemplary damages. From this point of view the result seems unjustifiable, as the plaintiff has suffered no more injury than if the trespass had been innocent, and deserves no greater compensation.

EMINENT DOMAIN — WHAT PROPERTY CAN BE TAKEN — LAND ALREADY DEVOTED TO THE SAME PUBLIC USE. — An electric railway company acquired a site for a power plant and was proceeding with due diligence to develop it for use. Another railway company seeks to take the land for the same purpose by eminent domain under a general statute. *Held*, that it cannot do so. *State* v. *Superior Court for Spokane County*, 145 Pac. 999 (Wash.).

This decision is undoubtedly correct. It is true that property already held for a public use is still subject to the state's power of eminent domain. *Central Bridge Corp.* v. *Lowell*, 4 Gray (Mass.) 474. And property may be taken from private into public ownership to be used for the same public purpose. *In the Matter of the City of Brooklyn*, 143 N. Y. 596, 38 N. E. 983; *Brady* v. *Atlantic City*, 53 N. J. Eq. 440, 32 Atl. 271. But it is not within the power of the legislature to authorize a private individual or corporation to take property already devoted to public use to be used for the same purpose and in the same manner, for this would merely effect an arbitrary transfer of the property of one person to another without the justification of public necessity or benefit which is the basis of the right of eminent domain. *Cary Library* v. *Bliss*, 151 Mass. 364, 25 N. E. 92; and see *Lake Shore & M. S. Ry. Co.* v. *Chicago & W. I. R. Co.*, 97 Ill. 506, 512; *West River Bridge Co.* v. *Dix*, 6 How. (U. S.) 507, 537; 2 LEWIS, EMINENT DOMAIN, 3 ed., § 440. The result of this case could also be reached by statutory construction, for unless greater power is given expressly or by necessary implication, general eminent domain statutes give the right to take land already in public use, only upon the condition that the loss of the part taken will not seriously impede this existing use and that the condemnor can show a reasonable necessity for it. *In the Matter of the City of Buffalo*, 68 N. Y. 167; *Rutland-Canadian R. Co.* v. *Central Vermont Ry. Co.*, 72 Vt. 128, 47 Atl. 399; *Butte A. & P. Ry. Co.* v. *Montana U. Ry. Co.*, 16 Mont. 504, 41 Pac. 232; see 18 HARV. L. REV. 313. But see *Marin County Water Co.* v. *Marin County*, 145 Cal. 586, 79 Pac. 282.

EVIDENCE — CHARACTER OF PARTIES — ADMISSIBILITY IN CIVIL SUITS INVOLVING MORAL TURPITUDE. — In an action upon a fire insurance policy, the defendant sought to defeat recovery upon the ground that the insured, who died before trial, had fraudulently overstated his loss. On this issue evidence of the good reputation of the insured for truth and honesty was given. *Held*, that such evidence is admissible. *Rasmusson* v. *North Coast Fire Ins. Co.*, 145 Pac. 610 (Wash.).

Attempts have been made at various times to engraft exceptions upon the general rule excluding evidence of the character of the parties in civil suits where it is not itself in issue. In negligence cases the reputation of the negligent person has been admitted where there were no eyewitnesses. *Chicago, R. I. & P. Ry. Co.* v. *Clark*, 108 Ill. 113. But see 12 HARV. L. REV. 500, 568. Another exception was attempted in an early New York case, where the act involved moral turpitude and was based solely upon circumstantial evidence. *Ruan* v. *Perry*, 3 Cai. (N. Y.) 120. But this case was promptly overruled and is generally repudiated to-day. *Gough* v. *St. John*, 16 Wend. (N. Y.) 646. See 1 WIGMORE, EVIDENCE, § 64. Upon analogy to the ordinary rule in criminal cases allowing